

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

TF-0014/vd
July 26, 2023
9:00 AM

IN RE: X

Chapter 13
Case No. 23-22178-CGM-13

STEFAN THEODORE MALGARINOS,

NOTICE OF MOTION

Debtor.

X

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Cecelia G. Morris, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, VIA ZOOM on the 26th day of July, 2023 at 9:00 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. §1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that any hearing on the within application will be held by telephone or Zoom video conference only. No in-person hearing will be held in the Courthouse. Participants are required to register their appearance at <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl> 48 hours before the scheduled hearing.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Thomas C. Frost, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: White Plains, New York
July 6, 2023

/s/ Thomas C. Frost
THOMAS C. FROST, CHAPTER 13 TRUSTEE
399 KNOLLWOOD ROAD, STE 102
WHITE PLAINS, NY 10603
(914)328-6333

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Chapter 13
Case No: 23-22178-CGM-13

STEFAN THEODORE MALGARINOS,

APPLICATION

Debtor.

_____X

TO THE HONORABLE CECELIA G. MORRIS, U.S. BANKRUPTCY JUDGE:

THOMAS C. FROST, ESQ., Standing Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on March 6, 2023 and, thereafter, THOMAS C. FROST was duly appointed and qualified as Trustee.
2. The Debtor's proposed Chapter 13 Plan requires a payment that is higher than the disposable income indicated by Schedules I and J, and as such it cannot be confirmed
3. The Debtor's proposed Chapter 13 Plan must be amended to address all secured and priority creditors consistent with the amounts listed in the filed claims.
4. The Debtor has failed to comply with 11 U.S.C. §521(a)(1) and Bankruptcy Rule 1007(b) in that the following required documents have not been filed:
 - a. copies of all payment advices or other evidence of payment for last 60 days before the date of the filing of the petition by the Debtor from any employer of the Debtor pursuant to 11 U.S.C. §521(a)(1)(B)(iv).
5. Furthermore, the Debtor has failed to:
 - a. appear and be examined at the Section 341 Meeting of Creditors as required by 11 U.S.C. §343;
 - b. commence making Chapter 13 plan payments to the Trustee, as required by 11 U.S.C. §1326(a)(1);
 - c. file a Chapter 13 Plan, as required by 11 U.S.C. §1321 and Fed. R. Bankr. P. 3015(b) as the Debtor's proposed Chapter 13 plan is the plan for the Eastern District of New York (ECF No. 3);
 - d. file with the Court evidence that the Debtor has completed an instructional course concerning personal financial management as required by 11 U.S.C. §1328(g)(1);
 - e. file with the Court a certification that all amounts payable under a domestic support obligation have been paid as required by 11 U.S.C. §1328(a); and

- f. provide the Trustee with copies of filed 2021 and 2022 federal and state tax returns and refunds, if any.
6. The deficiencies as stated above impede the Trustee's ability to administer this case and, therefore, is a default that is prejudicial to the rights of the creditors of the Debtor pursuant to 11 U.S.C. §1307(c)(1).
7. The foregoing constitutes cause to dismiss this Chapter 13 case within the meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Dated: White Plains, New York
July 6, 2023

/s/ Thomas C. Frost
Thomas C. Frost, Chapter 13 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

STEFAN THEODORE MALGARINOS,

Debtor.

Case No: 23-22178-CGM-13

**CERTIFICATE OF SERVICE
BY MAIL**

This is to certify that I, Thomas C. Frost, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

STEFAN THEODORE MALGARINOS
30 BROADWAY
PLEASANTVILLE, NY 10570

COURTNEY R. SHED, ESQ.
GROSS POLOWY, LLC
1775 WEHRLE DRIVE
SUITE 100
WILLIAMSVILLE, NY 14221

This July 6, 2023

/s/Thomas C. Frost
Thomas C. Frost, Esq., Trustee
Office of the Standing Chapter 13 Trustee
Thomas C. Frost, Esq.
399 Knollwood Road, Suite 102
White Plains, New York 10603
(914) 328-6333

CASE NO: 23-22178-CGM-13
Hon. CECELIA G. MORRIS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

STEFAN THEODORE MALGARINOS,

Debtor.

**NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE**

**THOMAS C. FROST
STANDING CHAPTER 13 TRUSTEE
399 KNOLLWOOD ROAD, SUITE 102
WHITE PLAINS, NEW YORK 10603
(914) 328-6333**
